



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, CNC, RP, OLC**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act;
2. An Order for repairs to the unit after providing a written notice to the Landlord pursuant to Section 32 of the Act;
3. An Order for the Landlord to comply with the Act, regulations and tenancy agreement pursuant to Section 62(3) of the Act; and,
4. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord, HJ, and the Tenant, SM, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord testified that he served the Tenant with the One Month Notice by email on November 1, 2021. The Tenant confirmed she received the One Month Notice by email on October 31, 2021. I find that the Tenant was sufficiently served with the One Month Notice on October 31, 2021, in accordance with Section 71(2)(b) of the Act.

The Tenant confirmed that she served the Landlord with the Notice of Dispute Resolution Proceeding package and her evidence for this hearing by email on November 12, 2021 (the “NoDRP package”). The Landlord confirmed receipt of the NoDRP package and evidence on November 12, 2021. I find that the Landlord was sufficiently served with the documents for this hearing on November 12, 2021, in accordance with Sections 71(2)(b) and 71(2)(c) of the Act.

Preliminary Matter

Prior to the parties’ testifying, I advised them that Rule 2.3 authorizes me to dismiss unrelated claims contained in a single application. The Tenant had indicated different matters of dispute on the application, the most urgent of which is the claim to cancel the One Month Notice. I advised that not all of the claims on the application are sufficiently related to be determined during this proceeding; therefore, I will consider only the Tenant’s request to cancel the One Month Notice and the claim for recovery of the application filing fee at this proceeding. The Tenant’s other claims are dismissed, with leave to re-apply.

Issues to be Decided

1. Is the Tenant entitled to a cancellation of the Landlord’s One Month Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this periodic tenancy began on April 1, 2020. Monthly rent is \$2,250.00 payable on the first day of each month at the start of the tenancy, but is now reduced due to issues over the electricity and hydro bills to \$2,225.00 per month. A security deposit of \$1,125.00 was collected at the start of the tenancy and is still held by the Landlord.

The reasons on the One Month Notice are that the Tenant or a person permitted on the property by the Tenant has put the Landlord’s property at significant risk and the Tenant

has not done required repairs of damage to the unit. The Landlord provides further details of the causes required for the One Month Notice:

1. Due to lack of proper maintenance and cleanliness by the tenant, Landlord had to hire 3-4 times pest management firms to address the problem but every time pest management professionals indicated the main cause of infestation as 'lack of cleanliness and proper maintenance of appliances';.
2. Neighbours complaints was conveyed many times that Tenant kids damage their doors and gates by playing Football and cycles.
3. Tenant damaged Garage Gate but did not get it fixed as per her responsibility
4. Newly installed and properly operational appliances were damaged but Tenant not willing to get them fixed

The effective date on the One Month Notice was November 30, 2021.

The Landlord uploaded the One Month Notice after the hearing as this document was not submitted in either parties' evidence packages. I note the One Month Notice is not signed by the Landlord.

The Landlord testified that the Tenant has not completed required repairs of damage. He also states there is a general lack of cleanliness in the rental unit which has significant implications for the pests in the rental unit.

The Landlord stated in April 2020, he received a notification from the Tenant that pointed to issues with the dishwasher and the garbage disposal. The Landlord sent a plumber to assess the situation and it was determined that acid was used down the drain and it damaged the plastic walls inside the garbage disposal.

The Landlord said the dishwasher was manoeuvred in such a way that it was so damaged, it needed to be replaced. He replaced the dishwasher. This cost the Landlord \$425.00.

Still in that first month of tenancy, the Tenant reported pest issues with mice and cockroaches. The Landlord sent a pest control company to do a treatment. This cost the Landlord \$315.00.

In August 2020, the bathroom toilet was plugged, and the Landlord said he sent a plumber in again to assess the situation. The plumber removed a child's toy from the toilet. This cost the Landlord \$290.00.

In April 2021, the Landlord received a message from the Tenant that cockroaches were eating the cooking range. The Landlord sent a repairman, and it cost him \$445.25.

On July 19, 2021, the pest control company sent the Landlord a written message stating:

*I treated this unit for cockroaches 4 times with different chemicals with recommended procedures but the Tenant are not cleaning the house especially kitchen so cockroaches feed on thrown food and not going to eat poison so it is advised to keep the kitchen clean to finish the problem.
Thanks*

The Landlord has replaced the oven, of which he deducted the cost from the rent amount owing. The Landlord did an inspection of the rental unit and the walls were coloured with different coloured pencils by the children.

The Landlord has received complaints from the residential property strata council regarding road safety issues where the Tenant's kids ride their bicycles, and reported lack of cleanliness around the mailbox. The Landlord submitted a picture showing mail left outside the mailbox with the Tenant's name on it. One council member is a neighbour of the Tenant, and this owner complains that cockroaches are coming from the Tenant's unit, into her own unit.

Lastly, the Landlord reports that the Tenant has bent a metallic part of the garage door, and she has refused to repair it after the Landlord sending a communication to her on WhatsApp.

The Landlord states that the maintenance, cleanliness and rough treatment in the rental unit are not appropriate and are damaging the Landlord's appliances, the garage door, and generally inside his property. He is seeking an Order of Possession of his townhouse.

The Tenant is an employed mother with two children, 12 and 3 years old, and her senior mother in her home. She testified that she did not check all the appliances when she first moved into the rental unit. After the first use of the dishwasher, the kitchen and living room were flooded because it was not draining properly.

The Tenant stated when she first moved in in April 2020, the downstairs toilet was blocked and she said she got her own person to do the repair. She testifies that the pests in the home, although they have been treated, they have not gone away.

The Tenant asserts that her children are not the only children playing outside in the complex. Many children are outside, riding their bikes, and playing with balls.

Services or facilities included in the rent are: Water, Electricity, Heat, Natural gas, Free laundry, Refrigerator, Dishwasher, Stove and oven, Carpets, and Parking for 1 vehicle. The Tenant wants the Landlord to continue to treat the pests in the rental unit and if the pests damage an appliance, the Tenant wants the Landlord to deal with it as they are included facilities and services under the tenancy agreement.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 47 of the Act is the relevant part of the legislation in this application. It states:

- 47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

...

- (d) *the tenant or a person permitted on the residential property by the tenant has*

...

- (iii) *put the landlord's property at significant risk;*

...

- (g) *the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [obligations to repair and maintain], within a reasonable time;*

- (3) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

The One Month Notice uploaded was not signed by the Landlord. Section 52 of the Act states:

- 52 *In order to be effective, a notice to end a tenancy must in writing and must*
- (a) be signed and dated by the landlord or tenant giving the notice,*
 - (b) give the address of the rental unit,*
 - (c) state the effective date of the notice,*
 - (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,*
 - (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and*
 - (e) when given by a landlord, be in the approved form. (emphasis mine)*

I find the Landlord's One Month Notice is not effective due to a lack of his signature. I make no finding on the merits of the One Month Notice and I cancel it as the notice does not comply with Section 52 of the Act. The legislation is clear about this procedure, so I must follow it.

For the Tenant's benefit, I point to Section 32 of the Act which sets out the obligations of landlords and tenants to repair and maintain rental units. Section 32(1) of the Act states a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. While Section 32(2) of the Act specifies that tenants must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit.

The Tenant's application to dismiss the Landlord's One Month Notice is granted; however, this is more based on the fact that the One Month Notice did not comply with Section 52 of the Act. As the Tenant was not fully successful in her application, I decline to grant the filing fee.

I find that the One Month Notice submitted into documentary evidence does not comply with Section 52 of the Act and I cancel it. The tenancy shall continue until it is ended in accordance with the Act.

Conclusion

The Landlord's One Month Notice is cancelled.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 1, 2022

Residential Tenancy Branch